IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

WP(C).No. 30303 of 2006(G)

PETITIONER:

M.L.VINNY, S/O.LONAPPAN,
MENACHERRY HOUSE, NARAKAL P.O.,
NARAKAL VILLAGE, KOCHI TALUK,
ERNAKULAM DISTRICT.

BY ADV. SRI.JOHN JOSEPH(ROY)

RESPONDENTS:

1.THE NARAKAL GRAMA PANCHAYATH,
REP. BY ITS SECRETARY,
PANCHAYATH OFFICE, NARAKAL P.O.,
NARAKAL, KOCHI TALUK.

2.ANTONY, MANAVALAN HOUSE,
NARAKAL P.O., NARAKAL, KOCHI TALUK.

*ADDL.R3.THE SENIOR TOWN PLANNER, ERNAKULAM.

**ADDL.R4.THE CHIEF TOWN PLANNER, TRIVANDRUM.

*ADDL.R3 IS SUO MOTU IMPLEADED AS PER THE ORDER DT. 18.12.06.
**ADDL.R4 IS IMPLEADED VIDE JUDGMENT DATED 26.2.2007.

R2 BY ADV. SRI.SAJAN MANNALI
SRI.M.P.JAYAKUMAR
SMT.K.INDU (POURNAMI)
R1 BY ADV. SRI.M.N.SANJITH
R3-R4 BY GOVT. PLEADER MR.K.J.MOHAMMED ANSAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/02/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.30303 OF 2006
.....
DATED THIS THE 26th FEBRUARY, 2007

J U D G M E N T

The petitioner, a resident of the 1st respondent-Panchayat challenges Ext.P2 stop memo issued by the Panchayat to her in respect of the constructions which have been undertaken by her on the basis of Ext.P1 building permit. The 2nd respondent is one Antony, allegedly at whose behest, Ext.P2 is issued by the Secretary of the 1st respondent-Panchayat. According to the petitioner, she was going ahead with the constructions strictly in accordance with Ext.P1 building permit and plan in respect of which Ext.P2 has been issued. The construction is being made so as to comply with court directions to let out rooms to certain old tenants of the petitioner who had to be evicted under the provisions of the Rent Control Act. The 2nd respondent has no property or any right over any property situated near the petitioner's property. None of the neighbouring property owners or statutory authorities have a case that there is any variation from or violation of the approved plan. The stop memo Ext.P2, it is alleged, is issued solely on the basis of some false

complaint with ulterior motives and on political considerations. To Ext.P2, Ext.P3 reply was submitted by the petitioner who requested for a verification of the construction by a competent overseer. To the petitioner's knowledge, the overseer of the Panchayat has reported that there is no violation of the approved plan. The petitioner submits that she is ready and willing to demolish the constructions if any authority ultimately finds that there is violation. The road frontage portion has not been touched at all. The delay in the matter of building construction is causing heavy loss to the petitioner and accordingly she prays that Ext.P2 be quashed and a writ of mandamus be issued directing the 1st respondent to permit the petitioner to continue with the construction as per Ext.P1. There is a further prayer that the 1st respondent-Panchayat be directed to take a final decision on Ext.P3 forthwith.

2. The Panchayat has filed a detailed counter affidavit. Issuance of Ext.P1 is admitted and it is stated that on the basis of the report submitted by the overseer, Ext.P1 was issued permitting the petitioner and his wife to strengthen the existing shop rooms and to construct shop rooms on the first floor after changing the roof. It is then submitted that complaint was given by the 2nd respondent to

the Panchayat on 16.10.2006 alleging that the petitioner is constructing the building in violation of the Kerala Building Rules and deviating from the plan which was approved by the Panchayat. On enquiry, prima facie, it was found that the construction of the aforesaid building is carried out in violation of the building permit issued by the Panchayat. That was why Ext.P2 stop memo was issued. When it was reported that in spite of Ext.P2 stop memo the petitioner was continuing with the construction activity the matter was referred to the Local Sub Inspector of Police. Thereafter a reply was submitted by the petitioner and his wife before the Panchayat claiming that the construction is being taken up strictly in accordance with the plan approved by the Panchayat. The Panchayat has produced Ext.R1(1), which is a copy of the report submitted by the overseer regarding the construction work which is being actually carried out by the petitioner. In Ext.R1(1) it is reported that the construction is in violation of the Kerala Building Rules as it was deviated from the plan approved by the Panchayat. The counter affidavit refers to various statutory provisions particularly Section 235W of the Panchayat Raj Act and justifies its action of issuing Ext.P2.

3. It is the party respondent who has raised even more serious contentions. He contends that he filed complaint not in his individual capacity but in his capacity as Secretary of the St. Mary's Yuvajana Sangam, which is an organization working for the betterment of the St.Mary's Church and its worshipers. That fact has been deliberately suppressed by the petitioner so as to make it appear that the 2nd respondent is espousing a personal grievance. The organization has 40 members and is an vibrant and active organization working in the locality. Some of the members of its organization are members of the Safe Committee relating to the properties of the St.Mary's Church Narakkal, are interested in the matter. Ext.R2(1) is a copy of that complaint. Ext.R2(2) is a copy of the plan in respect of which Ext.P1 permit was issued. It is then submitted that after submitting Ext.R2(2) before the Rent Control Appellate Authority what the petitioner did was to submit a fresh plan before the Panchayat in 2006. Ext.R2(3) is copy of the fresh plan. Ext.R2(3) deviates materially from Ext.R2(2). The petitioner is to explain as to how he will be able to construct a new floor without reconstructing the existing ground floor. The 2nd respondent contends that untrue statements have been made by the petitioner in Ext.R2(3) on

material aspects such as ownership over the properties including the neighbouring properties and space left out for statutory set backs. It is pointed out that the petitioner has claimed property belonging to the St. Mary's Church, Narakkal as his own property as per Ext.R2(3). This was why complaint was filed by the 2nd respondent before the Secretary of the Panchayat seeking to stop illegal constructions. The complaint was ignored by the Secretary in the first instance. Therefore the petitioner submitted Ext.R2(4) fresh complaint dated 18.10.2006. Ext.R2(4) was received by the 1st respondent and Ext.R2 (5) is the receipt in that regard. Ext.P2 stop memo, it is understood was issued by the Panchayat on the basis of enquiries conducted pursuant to Ext.R2(4) complaint. Constructions were carried on by the petitioner illegally during the last six months without any approval from any quarter and a new two storied building has been constructed. The claim of the petitioner that the present construction was completed within a period of 17 days from 30.9.2006 to 17.10.2006 the date of Ext.P2 is inherently false. It is not humanly possible to complete such a two storied building within 17 days. In spite of the stop memo the petitioner was going on with illegal constructions taking advantage the holidays between 21.10.2006 to

24.10.2006 being Deepavali and Ramzan holidays. On coming to know of this the 2nd respondent filed complaint dated 20.10.2006 before the 1st respondent sufficiently early informing the first respondent of the attempt of the petitioner. The 1st respondent did not move a little finger to take any safeguards to prevent the violation of the stop memo. At 3 A.M. in the morning on 21.10.2006 the 2nd respondent and members of his organisation on getting information that stop memo was being violated filed Ext.R2(6) complaint before the 1st respondent and Ext.R2(7) before the Sub Inspector of Police. When the Sub Inspector of Police came over to the site and questioned the petitioner regarding the illegal constructions, he took a false stand that he has not received Ext.P2 at all. The Sub Inspector went back without interfering in the matter. But later when the Sub Inspector visited the site again as requested by the 2nd respondent and his associates the petitioner took the stand that stop memo had been received not by him but only by his wife. The Sub Inspector realising true facts ultimately compelled the petitioner to refrain from further constructions. The counter affidavit points out that complaint has been submitted before the Minister and the Minister has forwarded the complaint to the Chief Town Planner.

Ext.R2(9) is copy of the letter from the Minister's office.

4. As directed by me the Senior Town Planner, Ernakulam has impleaded as additional third respondent in the Writ Petition and the additional third respondent was directed to inspect the constructions which has been undertaken by the petitioner with reference to Ext.R2 (3) approved plan and Ext.R1 report submitted by the Overseer of the 1st respondent-Panchayat and to file a report before this court as to whether the allegation that the building rules have been violated and construction is being undertaken deviating from the approved plan is correct. Accordingly, the Senior Town Planner has submitted a report. It is stated therein that though the building permit was for strengthening the existing building and for construction of the first floor, now the petitioner has carried construction after demolishing the existing building and this is in violation of K.M.B.R.1999. It is reported further that on site inspection it is found that the building is partially completed. Approximately the area completed is 255 Sq.M. area in the ground floor and first floor. The building appears to be a new construction. It is reported further that the building permit has been issued as per Rule 100 of the K.M.B.R.1999 which pertains to special provisions for additions etc. over the existing building. What is

permitted under Rule 100 is strengthening of the existing building ground floor and first floor. But demolition of existing building and construction of a new building will not come within the purview of Rule 100. Therefore the present construction has to be construed as a new one and the rule applicable for the new constructions are to be applied. It is further reported that Rule 100 does not apply to the petitioner's case and in that view of the matter the building construction violates Rules 24(3), 24(5), 102(3) and 56(1) of the K.M.B.R.1999.

5. Obviously on noticing the report submitted by the additional third respondent the petitioner has filed I.A.No.1611/07 seeking impleadment of the Taluk Surveyor, Fort Kochi as additional 4th respondent and to accept Ext.P4 re-survey plan in evidence. It is stated in the affidavit that an application for fixation of the boundary of the petitioner's property on the basis of the re-survey plan copy of which is Ext.P4 is pending before the proposed additional 4th respondent.

6. Very elaborate submissions were addressed before me by Mr.John Joseph, counsel for the petitioner, Mr.M.N.Sanjith, counsel for the 1st respondent and particularly by Mr.Sajan Mannali, counsel

for the 2nd respondent. Strong exception was taken by the counsel for the petitioner to the report submitted by the Overseer and also the additional third respondent, the Senior Town Planner, Ernakulam. Learned counsel insisted that the Taluk Surveyor be impleaded as 4th additional respondent and he be directed to conduct a measurement of the properties on the basis of Ext.P4 re-survey plan. If such a plan is received, it will be seen that the rule violations which are highlighted by the additional third respondent in his report are not real.

7. I do not think that this court sitting in jurisdiction under Article 226 of the Constitution will be justified in directing a measurement of the petitioner's property on the basis of the re-survey plan so as to settle the question whether the ongoing constructions which were restrained by the Panchayat as per Ext.P2 violate Kerala Municipality Building Rules, 1999. I do find some force in the submission of Mr.Mr.Sajan Mannali that Rule 100 will not enable substitution of an existing ground floor with a new one. Whatever that be, I do not propose to decide the issue finally. It is seen that the Minister has forwarded the complaint submitted by the 2nd respondent to the Chief Town Planner. I dispose of the Writ

Petition directing the Chief Town Planner, Trivandrum to settle the dispute involved in this Writ Petition, i.e., whether the construction which has been taken up by the petitioner on the strength of Ext.P1 as reported by the Senior Town Planner in his report dated 20.1.2007 submitted to this court are legal in terms of the Kerala Municipality Building Rules, 1999. The issue will be decided by the Chief Town Planner with notice to the petitioner, the 1st respondent-Panchayat, the 2nd respondent and the St. Mary's Yuvajena Sangam as well as St. Mary's Church, Narakal. The decision shall be taken by the Chief Town Planner after obtaining fresh reports on the basis of further inspections conducted through his subordinates in which case such inspections shall be with notice to the parties referred to above. The decision as directed above will be taken by the Chief Town Planner at his earliest and at any rate within two months of receiving a copy of this judgment. Till such time as a decision is taken by the Chief Town Planner as directed above, the petitioner will maintain status quo obtaining as on today as revealed by Ext.R2(8) photograph regarding the construction in question, i.e., he will not continue the constructions.

8. The Chief Town Planner, Trivandrum is impleaded as

additional respondent No.4 in the Writ Petition. Registry will carry out corrections in the cause title. The Government Pleader will inform the additional 4th respondent of this judgment and the parties are directed to place copies of this judgment before the additional 4th respondent so as to enable prompt compliance. No costs.

tgl/srd/dpk **PIUS C.KURIAKOSE, JUDGE**